IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.681 of 2001.

Date of decision: 28.12.2006

Ravinder Nath Sharma **Petitioner**

Versus

State of H.P. and others **Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1] *No*

For the Petitioner : **Mr. Ramakant Sharma, Advocate.**

For the Respondents : **Mr. Rajan Dewan, Addl. Advocate General.**

Dev Darshan Sud,J.(oral)

The petitioner has approached this Court under Article 226 of the Constitution of India challenging the orders passed by the Commissioner (Revenue), Himachal Pradesh, in appeal No.14/2001 under Section 9 of the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (hereinafter referred to as the Act), affirming the judgment dated 30.1.2001 passed by the Collector, Kandaghat in case No.2/2000, ordering the eviction of the petitioner from the land comprised in Khasra NO.1357/152/1 measuring 0-14 biswas, Khasra No.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***?yes

1356/152/1, measuring 1-8 bighas, situated in village Bisha (Rawli), district Solan.

The brief facts are that the petitioner was issued a notice of the case under Section 4(1) of the Act in which it was alleged that he is in unauthorized occupation of the land. The description of the land was given as under:-

> "Land comprised in Kh. No.1357/152/1 measuring 0-14 bighas situated in village Bisha (Rawli) relating to Govt. In the possession of Revenue Deptt. is being encroached upon by you and construction work for the purpose building structure has been carried out on the site.
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> That the land comprised in Kh. No.1356/152/1 measuring 1-8 bighas relating to State Govt. in the possession of Forest Deptt. has been encroached and construction for the purpose of link road and retaining wall has been carried out on the spot."

The notice Annexure P-13 to the writ petition states that the petitioner was called upon to show cause on or before 26.12.2000 as to why he should not be ejected from the land as described above as he was an encroacher. A detailed reply, annexure P-14 was submitted by the petitioner. The petitioner submits that he had engaged S/Shri K.L. Gupta and Sudhir Gupta, advocates as counsel to represent him in the matter, but due to reasons beyond their control they could not appear in Court on 8.1.2001 when the petitioner was proceeded *ex*

parte by the Sub Divisional Magistrate-cum-Collector, Kandaghat. An application, Annexure P-14/A, was moved by the petitioner for setting aside the ex-parte proceedings ordered on 8.1.2001. It was stated in the application that on 8.1.2001, which was the date fixed for filing rejoinder by the State, the counsel for the petitioner could not be present because Shri K.L. Gupta had to rush to PGI for medical treatment and his son Shri Sudhir Gupta, who was the other advocate, had accompanied him. As such, it was requested that the *ex parte* order be recalled. The matter was taken on 20.1.2001, on which date, the Collector observed that application for setting aside the ex parte proceedings had been received on 20.1.2001, which according to him, was a very belated stage. The order records as under:-

> "On dated 20.1.2001 an application for rejoining the case has been received from Sh. Sudhir Gupta Advocate through Sh. Pankaj Sharma advocate at belated stage when the arguments have been heard in this case and the case has been listed for orders. Prayer to rejoin the case is allowed. To come up on 27.1.2001 for further orders on the main case file. This application be attached with the main case file. Announced."

The matter was then taken up on 13.1.2001, and the case decided against the petitioner ordering his eviction from the land. It is not disputed that the evidence on behalf of the State was recorded on 8.1.2001 and 15.1.2001 and the arguments were heard on 19.1.2001. On all these dates the petitioner and his counsel were

absent. There is nothing to indicate that notice of these proceedings was given to the petitioner. The case was then fixed for orders on 27.1.2001. The proceedings were complete in so far as the State is concerned. The Collector, therefore, proceeded to pass the eviction order against the petitioner. A detailed appeal, Annexure P-15, was filed before the Commissioner, who by his order dated 25.7.2001, dismissed the appeal.

The petitioner had filed a detailed appeal challenging the order on number of grounds, *inter alia*, that the appellant has no claim on any portion of the Govt. land and the construction in the nature of retaining wall etc. has been raised by him solely for the purposes of protecting his property as also to protect the road as it was collapsing and was likely to damage the property of the petitioner. The appellant had submitted that no encroachment has been made by him on any portion of the Govt. land. The grounds further state that Shri K.L. Gupta had been engaged as counsel, who was unable to attend to the matter because of his illness. The petitioner had challenged the report of Patwari Halqua and Kanungo etc. and submitted that a reading of the report itself would show that encroachment has not been made on any portion of the Govt. land. The Commissioner, while disposing of the appeal, only records certain facts and does not consider the submissions made on behalf of the petitioner more especially that there was no encroachment on the Government land. The evidence

on behalf of the State was recorded *ex parte* and the petitioner was never given a fair chance of contesting the case or the appeal.

I have heard the learned counsel for the parties and have also gone through the petition. I do not wish to express anything on merits of the claim put forth by the petitioner, as I find that the order passed by the Commissioner in appeal as also the Collector, are not in accordance with law. To say the least, the orders are in grave violation of Article 14 of the Constitution of India. It is by now well settled that even in ex parte proceedings, the findings must be based on some material on the record. The reply to the show cause notice has not been considered anywhere. Even if the petitioner was to be proceeded ex parte faulting him for not appearing before the Collector, the least which was required, was to have considered his reply. Both, the Collector as also the Commissioner, have not considered the fact that the non-appearance before the Collector was on account of the illness of the counsel, who had to be rushed to PGI, Chandigarh. This fact has not been disputed on the record. Surely, when ex-parte proceedings were set aside, a fair chance should and ought to have been given to the petitioner to have contested the matter. The Collector seems to have been influenced by the fact that the petitioner is an encroacher on Govt. land without considering his defence or taking into consideration the reply which he had sent

or the ground realities. The commissioner goes a step further. Being the appellate authority and the final one to have considered the question of facts, simply dismissed the appeal by ignoring the defence which had been raised by the petitioner in his reply. The fact that the least compliance with the principles of natural justice required that the petitioner be given a chance to cross-examine the witness who had been produced or to rebut the material which had already been placed on record, was ignored. Surely, if after this it was found that the petitioner was an encroacher, compliance with the principles of natural justice would not have in any manner legalized his possession. The petitioner was always entitled to show that there is no encroachment on any portion of the Govt. land; or the land on which 'danga' etc. was constructed, was not for the purpose of occupation which would be sufficient for invoking the provisions under the Act for evicting the petitioner from the land. To say the least, the appellate order is not reasoned and the order of the first Court has been made with a pre-determined mind in violation of the principles of natural justice. Once having set aside the ex parte proceedings, petitioner should have been given full opportunity of participating in the proceedings by leading evidence to show that he is not an encroacher on the Govt. land; or demonstrate from the record itself; or that the notice does not depict the factual position. All these and other factors were required to be

considered rather than approaching the case in a mechanical manner.

I have deliberately refrained from expressing any opinion on merits of the case with respect to the claim of the petitioner or the submissions made by the State regarding maintainability of the writ petition. I find that both the orders, which have been passed by the Collector as well as the Commissioner at Annexures P-16 and P-18, are illegal and in violation of Article 14 of the Constitution of India. They are accordingly quashed and set aside. The respondents will decide the case afresh after giving due opportunity to the petitioner to present his case before the Collector.

When the writ petition was filed in this Court, petitioner was given interim relief in CMP No. 1159/2001, whereby the parties were directed to maintain status-quo. This shall continue till the proceedings are disposed of by the Collector.

The writ petition is accordingly disposed of. There shall be no order as to costs.

December 28, 2006 **(Dev Darshan Sud)**
(ss) **Judge**